TENAGA GAGAH SDN BHD v. SAIK SIW LAI & ORS AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
HAMID SULTAN ABU BACKER JCA
NALLINI PATHMANATHAN JCA
[APPEALS NO: W-02(NCC)(A)-1544-09-2014
& W-03(IM)(NCC)-1-01-2015]
8 APRIL 2016

COMPANY LAW: *Winding up – Petition – Filing of more than one petition – Whether a company could be wound up twice – Whether second winding up order ought to be set aside – Whether second order rendered nugatory and superfluous – Whether trial judge erred in application of s. 219(2) of Companies Act 1965*

There were two petitions for winding up presented against the company by two separate petitioners. The first petition was premised on a failure to make good an award of the Housing Buyers' Claims Tribunal amounting to late interest charges in the sum of RM68,028.91 when a demand was duly made of the company under s. 218(2)(a) of the Companies Act 1965 ('the Act'). Under this first petition, the petitioner sought to appoint one Wong Weng Foo as the liquidator. Subsequently, a second winding up petition was filed and fixed for hearing ('the second petition') which was premised on a claim for unpaid architectural fees amounting to RM12,734.41. The second petitioner sought to intervene in the first petition to appoint Ler Chong Chye and Lum Tuck Cheong as liquidators ('Ler & Lum'). On the first hearing date of the first petition, at the behest of the solicitor for the company, the first petition was adjourned to a date after the hearing date fixed for the second petition. The court made an 'unless order' in respect of the first petition, stipulating that unless the aggregate amount of RM699,013.40 was paid by the next hearing date, the company would be wound up. At this first hearing, the court was not appraised of the existence of a second petition in respect of the company. When the second petition came up for hearing, which was on a date prior to the adjourned date for the first petition, the solicitors for the company did not disclose or bring to the attention of the court the 'unless order' that had been made in respect of the first petition. The company was duly wound up on the basis of the second petition and the liquidators nominated under the second petition were appointed. When the adjourned first petition came up for hearing, solicitors for the company informed the court that the company had been wound up earlier, pursuant to the second petition. The High Court, after deliberating on the chronological order of events, concluded that the conduct of the company's solicitors amounted to a tactical manoeuvre calculated to mislead the court. Therefore, the court went on to order that the company be wound up for a second time. The court also went on to appoint the liquidator nominated under the first petition to take precedence over the liquidators appointed under the second petition.

The judge relied on s. 219(2) of the Act to conclude that as there were two petitions for winding up, the one that was earlier in time would prevail. The company thus appealed against the grant of the second order of winding up as well as the appointment of the liquidator under the first petition to take the place of the liquidators appointed earlier in time pursuant to the second petition. The single issue that arose for consideration was whether a company could be wound up twice.

Held (allowing appeal)
Per Nallini Pathmanathan JCA delivering the judgment of the court:

(1) It is a settled legal principle that there is no prohibition against the filing of more than one winding up petition against a company at any one time. There is no requirement that leave of the court be obtained for the filing of the second or subsequent petition to wind up a company. However, once a winding up order has been pronounced in respect of any of these petitions, a second winding up order could not be pronounced. In other words, a company that had been wound up could not be subsequently wound up again. The trial judge erred in granting the second order of winding up. The proper course to have been adopted would have been an order of dismissal against the petition which was filed earlier in time but heard subsequent to the second petition *ie*, after a winding up order had been granted in respect of the second petition. (paras 33-35)

(2) The trial judge had erred in the application of s. 219(2) of the Act to the factual matrix of this case. The said section provides that a winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up. The use of the word 'the' preceding 'winding up' in the last segment of the section, clearly envisages that the date of commencement of a winding up and its consequences, come into play as of the date of the filing of that particular winding up petition. Section 219(2) does not provide that when there is more than one petition, that one which is earliest in time prevails. The petition that was heard first in time and results in the grant of an order of winding up is the correct date to ascertain the commencement of winding up as stipulated under s. 219(2). (paras 36-39)

(3) Therefore, the second winding up order granted in respect of the first petition ought to be set aside. A company could not be wound up twice. From the date the order of winding up of the company took effect, it rendered the second order nugatory and superfluous. The trial judge had erred in granting two orders winding up the same company twice, and then ascertaining the date of commencement of winding up order under s. 219(2) as relating back to the date of filing of the earlier of the two petitions. This court further substituted the liquidators appointed under the first order for winding up with the official receiver. This would allow the parties to apply for liquidators of their choice by way

of further application to the winding up court where they could both be heard, and a fully considered decision be made by the court with the benefit of disclosure of all the salient facts. (paras 30, 40 & 41)

***Bahasa Malaysia** Headnotes*

Terdapat dua petisyen untuk penggulungan yang dikemukakan terhadap syarikat oleh dua pempetisyen yang berasingan. Petisyen pertama dibuat berdasarkan kegagalan menunaikan award Housing Buyers' Claims Tribunal yang membawa kepada bayaran faedah yang lewat berjumlah RM68,028.91 apabila tuntutan dibuat pada syarikat di bawah s. 218(2)(a) Akta Syarikat 1965 ('Akta'). Di bawah petisyen pertama ini, pempetisyen melantik seorang yang bernama Wong Weng Foo sebagai pelikuidasi. Seterusnya, satu petisyen penggulungan kedua difailkan dan ditetapkan untuk perbicaraan ('petisyen kedua') yang berdasarkan tuntutan yuran seni bina yang belum dibayar berjumlah RM12,734.41. Pempetisyen kedua cuba mencelah dalam petisyen pertama untuk melantik Ler Chong Chye dan Lum Tuck Cheong sebagai pelikuidasi ('Ler & Lum'). Pada tarikh pendengaran pertama petisyen pertama, atas perintah peguam cara bagi syarikat itu, petisyen pertama ditangguhkan ke suatu tarikh selepas tarikh perbicaraan yang ditetapkan untuk petisyen kedua. Mahkamah membuat 'perintah melainkan' berkenaan petisyen pertama, dengan menetapkan bahawa melainkan jika jumlah RM699,013.40 dibayar sebelum tarikh perbicaraan akan datang, syarikat akan digulungkan. Pada perbicaraan pertama, mahkamah tidak dimaklumkan tentang kewujudan petisyen kedua berkenaan syarikat. Apabila petisyen kedua dibicarakan, iaitu pada tarikh sebelum tarikh yang ditangguhkan untuk petisyen pertama, peguam untuk syarikat tidak mendedahkan atau membawa kepada perhatian mahkamah 'perintah melainkan' yang telah dibuat berkenaan dengan petisyen pertama. Syarikat telah digulungkan berdasarkan petisyen kedua dan pelikuidasi-pelikuidasi di bawah petisyen kedua dilantik. Apabila petisyen pertama yang ditangguhkan dibicarakan, peguam syarikat memaklumkan mahkamah bahawa syarikat telah digulung sebelum itu, melalui petisyen kedua. Mahkamah Tinggi, apabila mempertimbangkan susunan kronologi peristiwa yang berlaku, memutuskan bahawa kelakuan peguam syarikat terjumlah kepada manuver taktikal untuk mengelirukan mahkamah. Oleh itu, hakim bicara memerintahkan supaya syarikat digulung buat kali kedua. Mahkamah juga melantik pelikuidasi yang dinamakan di bawah petisyen pertama untuk mengambil keutamaan ke atas pelikuidasi yang dilantik di bawah petisyen kedua. Hakim bicara merujuk kepada s. 219(2) Akta untuk memutuskan bahawa oleh kerana terdapat dua petisyen penggulungan, petisyen yang difailkan lebih awal akan mengatasi. Oleh itu, syarikat merayu terhadap perintah penggulungan kedua yang telah dibenarkan dan juga perintah pelantikan pelikuidasi di bawah petisyen pertama mengambil alih tempat pelikuidasi yang dilantik sebelum ini menurut petisyen kedua. Isu yang timbul untuk pertimbangan adalah sama ada sebuah syarikat boleh digulungkan sebanyak dua kali.

Diputuskan (membenarkan rayuan)
Oleh Nallini Pathmanathan HMR menyampaikan penghakiman mahkamah:

(1) Adalah satu prinsip undang-undang matan bahawa tiada larangan terhadap pemfailan lebih dari satu petisyen penggulungan terhadap syarikat pada satu-satu masa. Tiada keperluan untuk memperolehi kebenaran mahkamah untuk pemfailan petisyen kedua atau seterusnya bagi menggulungkan syarikat. Walau bagaimanapun, sebaik sahaja satu perintah penggulungan dikeluarkan berkenaan mana-mana petisyen ini, perintah penggulungan yang kedua tidak boleh diturunkan. Dalam erti kata lain, sebuah syarikat yang telah digulungkan tidak boleh digulungkan sekali lagi. Hakim bicara khilaf apabila membenarkan perintah penggulungan kedua. Prosedur yang sepatutnya diambil adalah perintah penolakan terhadap petisyen yang telah difailkan sebelum ini tetapi dibicarakan selepas petisyen kedua iaitu selepas perintah penggulungan telah dibenarkan berkenaan petisyen kedua.

(2) Hakim bicara khilaf dalam mengguna pakai s. 219(2) Akta melihat kepada matrik nyata kes ini. Seksyen tersebut memperuntukkan bahawa penggulungan disifatkan telah bermula pada masa petisyen penggulungan dikemukakan. Penggunaan perkataan 'the' sebelum 'winding up' dalam segmen terakhir seksyen, dengan jelasnya membayangkan bahawa tarikh permulaan penggulungan dan akibatnya, tercetus pada tarikh pemfailan petisyen penggulungan tertentu. Seksyen 219(2) tidak memperuntukkan bahawa apabila terdapat lebih dari satu petisyen, petisyen yang paling awal akan mengatasi. Petisyen yang didengar pertama sekali dan mengakibatkan kebenaran perintah penggulungan adalah tarikh yang betul untuk menentukan permulaan penggulungan sebagai ditetapkan di bawah s. 219(2).

(3) Oleh itu, perintah penggulungan yang kedua yang telah dibenarkan berkenaan petisyen pertama harus diketepikan. Syarikat tidak boleh digulung sebanyak dua kali. Dari tarikh perintah penggulungan syarikat berkuat kuasa, ia menyebabkan perintah kedua tidak berguna dan berlebihan. Hakim bicara khilaf apabila membenarkan dua perintah penggulungan syarikat yang sama, dan apabila menentukan tarikh permulaan penggulungan di bawah s. 219(2) sebagai tarikh pemfailan petisyen yang lebih awal dari dua petisyen tersebut. Mahkamah ini juga menggantikan pelikuidasi yang dilantik di bawah perintah pertama untuk penggulungan dengan pegawai penerima. Ini akan membenarkan pihak-pihak yang terlibat untuk memohon pelikuidasi pilihan mereka sendiri melalui permohonan selanjutnya kepada mahkamah penggulungan di mana mereka boleh didengar, dan satu keputusan yang dipertimbangkan sepenuhnya boleh dibuat oleh mahkamah dengan manfaat pendedahan semua fakta penting.

Case(s) referred to:
In re Building Societies' Trust Ltd (1890) 44 Ch D 140 ***(refd)***
In re European Banking Company ex parte Baylis (1866) LR 2 Eq 521 ***(refd)***
In re The Norton Iron Co (1878) 47 LJ Ch 9 ***(refd)***
Ladli Parshad And Anor v. Karnal Distillery Co Ltd AIR 1954 P H 94 ***(refd)***
Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals [2001] 3 CLJ 248 CA ***(refd)***
Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd [2008] 6 CLJ 681 FC ***(refd)***
Sinarlim Sdn Bhd v. Waja Destinasi (M) Sdn Bhd [2008] 1 LNS 72 ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 218(2)(a), 219(2)

(Appeal No: W-02(NCC)(A)-1544-09-2014)
For the appellant - Chin Tzi Song & Emmy Hazwani Jamil; M/s Arifin & Partners
For the respondents - Ong Keh Keong; M/s Ong Partnership
For the liquidator - Phang Soon Mun

(Appeal No: W-03(IM)(NCC)-1-01-2015)
For the appellants - Tan Keng Teck & Keneth VK Liew; M/s Lim Kian Leong & Co
For the 33rd-59th respondents - M Muthuraman Muthu; M/s YK Sui

[Editor's note: For the High Court judgment, please see Nik James Ferrie Arkitek v. Tenaga Gagah Sdn Bhd [2015] 1 LNS 232 (overruled); Appeal from High Court, Kuala Lumpur; Companies (Winding-Up) No: 28NCC-352-042014 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Nallini Pathmanathan JCA:

Introduction

[1] The single issue that arose for consideration in this appeal was whether a company can be wound up twice.

[2] There were two petitions for winding up presented against the respondent ('the company') by two separate petitioners. One was filed earlier than the other. The hearing date of the first petition was fixed prior to the second petition. The hearing date of the second petition, which was after the first petition, was not highlighted to the court or the first petitioner. In both the first and the second petitions, the respective petitioners sought the appointment of different liquidators.

[3] On the first hearing date of the first petition, at the behest of the solicitor for the company, the first petition was adjourned to a date after the hearing date fixed for the second petition. The court made an 'unless order' in respect of the first petition, stipulating that unless the aggregate amount of RM699,013.40 was paid by the next hearing date, the company would be wound up. At this first hearing the court was not appraised of the existence of a second petition in respect of the company.

[4] When the second petition came up for hearing, which was on a date prior to the adjourned date for the first petition, the solicitors for the respondent did not disclose or bring to the attention of the court the 'unless order' that had been made in respect of the first petition.

[5] The company was duly wound up on the basis of the second petition and the liquidators nominated under the second petition were appointed.

[6] Needless to say, the company did not comply with the unless order and when the adjourned first petition came up for hearing, solicitors for the company informed the court that the company had been wound up earlier, pursuant to the second petition.

[7] The court, after deliberating on the chronological order of events, ie, the dates of filing of the two petitions as well as the chronology of events ensuing, coupled with the non-disclosure by the respondent's solicitors, concluded that the conduct of the respondent's solicitors amounted to a tactical manoeuvre calculated to mislead the court. Therefore the learned judge went on to order that the company be wound up for a second time. The court also went on to appoint the liquidator nominated under the first petition to 'take precedence' over the liquidators appointed under the second petition.

[8] The company appealed against the grant of the second order of winding up as well as the appointment of the liquidator under the first petition to take the place of the liquidators appointed earlier in time pursuant to the second petition.

[9] The chronology of events, is of primary importance and is set out below. We have adopted this chronology from the comprehensive judgment of the learned judge.

Background Facts

[10] On 24 April 2014 Winding Up Petition No. 28NCC-352-04-2014 was filed and fixed for hearing on 10 July 2014 ('the first petition'). The first petition was premised on a failure to make good an award of the Housing Buyers' Claims Tribunal amounting to late interest charges in the sum of RM68,028.91 when a demand was duly made of the company under s. 218(2)(a) of the Companies Act 1965 ('the Act'). Under this first petition, the petitioner sought to appoint one Wong Weng Foo as the liquidator.

[11] On 23 May 2014 Winding Up Petition No. 28NCC-410-05-2014 was filed and fixed for hearing on 31 July 2014 ('the second petition'). This second petition was premised on a claim for unpaid architectural fees amounting to RM12,734.41.

[12] On 20 June 2014, the second petitioner sought to intervene in the first petition to appoint Ler Cheng Chye and Lum Tuck Cheong as liquidators ('Ler & Lum'). The date of this application was fixed on the same date as the hearing of the first petition.

[13] It is apparent from the foregoing that different liquidators were sought by different creditors under the two petitions. A

[14] On the first date of hearing of the first petition, solicitors for the second petitioner appeared and sought an adjournment on the grounds that the exchange of affidavits for the application to intervene had not concluded. Solicitors for the respondent who were present at the hearing of the first petition also presented a cheque in the sum of RM68,028.81 in settlement of the first petitioner's claim under the petition. The hearing of the first petition was then adjourned to 23 July 2014. B

[15] However on the following day, namely 11 July 2014, the first petitioner's solicitors received a letter putting them on notice that several buyers had obtained awards from the House Buyers' Claims Tribunal and there could be no payment made to the first petitioner in preference over other creditors, as this would amount to undue preference. C

[16] On the same date, solicitors for the second petitioner attended case management for the second petition where the Registrar's certificate was issued and the second petition was fixed for hearing on 31 July 2014. The second petitioner did not highlight the hearing date of the second petition to the first petitioner or the court. D

[17] Subsequently, the first petitioner received notices of intention to appear on the adjourned hearing date of the first petition from other sets of unsecured creditors on 21 and 22 July 2014. The first petitioner also filed an affidavit affirming to the fact that it would not utilise the cheque in the sum of RM68,028.81 as that would amount to an undue preference. The said monies were therefore placed with a stakeholder. E F

[18] On 23 July 2014, the adjourned date of the hearing of the first petition, the first petitioner's solicitors and solicitors for the other sets of unsecured creditors, numbering 52, claimed an aggregate amount of RM699,013.04. They appeared in court and supported the first petition. However the solicitor for the company, one Marcus Tan sought a postponement of the hearing of the first petition, claiming that the company was solvent and able to pay the aggregate sum owing to the 52 creditors. G

[19] The learned judge, after anxious consideration, granted an unless order, stipulating that unless the aggregate sum of RM699,013.04 claimed by the unsecured creditors was paid in full on or before the next hearing date, the company would be wound up. This second adjourned hearing date was fixed for 8 August 2014. H

[20] In the interim, on 31 July 2014, the second petition came up for hearing. The solicitor for the company was present but failed to highlight or disclose the fact that an 'unless order' had been made against the company, and that the adjourned hearing date of the first petition had been fixed on I

8 August 2014. Instead the petition was duly heard and an order to wind up the company made on that day. Ler & Lum were appointed as liquidators, as sought under the second petition.

[21] When the first petition came up for hearing on the adjourned date, it transpired that the company had not complied with the 'unless order' of 23 July 2014. Instead the solicitor for the company advised the court that the company had been wound up one week later, on 31 July 2014.

[22] The learned High Court Judge after deliberating on the chronological order of events as set out above granted a second order to wind up the company and further ordered that Wong Weng Foo 'take precedence' over Ler & Lum as liquidators.

The Decision Of The High Court

[23] The reason proffered by the learned judge of the High Court for the grant of the second winding up order and the consequent substitution of the liquidator under the first petition, Wong Weng Foo in precedence over Ler & Lum was because Her Ladyship found that the solicitors for the company and the second petitioner had tactically delayed the hearing of the first petition to 8 August 2014, thereby ensuring that the second petition was heard on 31 July 2014. This enabled their chosen appointees, Ler & Lum, to take on the role of liquidators of the company. Of particular concern to her was the fact that while the solicitor for the respondent had expressly sought an adjournment to settle all creditors' claims on 23 July 2014, culminating in the grant of an 'unless order', no attempt had been made by the said solicitor to disclose or highlight to the court one week later on the hearing of the second petition that such an order had been made and that an adjourned date had been fixed for the hearing of the first petition. Neither did he see fit to highlight this fact to the court on 31 July 2014 when the winding up order under the second petition was pronounced. The identity of the second petitioner was not highlighted either.

[24] Equally the second petitioner did not highlight or disclose the existence of the first petition notwithstanding that the second petitioner had sought to intervene in the first petition.

[25] The learned judge found the lack of candour on the part of the solicitor for the company and the second petitioner deplorable and sought to unravel the seeming inequity of the situation by granting the second order of winding up.

[26] In so doing Her Ladyship relied on s. 219(2) of the Act as judicially interpreted in the Federal Court case of *Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd* [2008] 6 CLJ 681 at p. 690; [2008] 2 MLRA 31 at p. 320, para. 19 where His Lordship Arifin Zakaria FCJ (now Chief Justice of Malaysia) stated as follows:

> [19] The single issue before us is whether a petitioner in a winding up petition may be excused from advertising the fact of the petition after the debt had been fully paid by the respondent. If the answer to this question is in the negative then the appellant would succeed in its defence of absolute privilege.

And at para. 21:

> [21] It is pertinent to note that the petition herein was grounded on the presumed insolvency under s. 218(1)(e) read together with s. 218(2)(a) of the Act. And under s. 219(2) it is provided that the winding up shall be deemed to have commenced at the time of the presentation of the winding up. This provision has many important consequences one of which is that once the winding up petition has been duly presented it sets in motion the relevant provisions of the Act and WUR *vis a vis* the respondent. Hence the validity of the respondent's argument that since the appellant's debt had been fully settled by the date the advertisement was published in the newspaper, the appellant is therefore no longer obliged to advertise does not hold water. In this case the winding up petition was presented on 22 March 1999, and by virtue of s. 219(2) of the Act the winding up of the respondent is deemed to have commenced on that date. Therefore as from that date the full rigour of the relevant provisions of the Act and WUR would apply to the respondent.

[27] Applying this principle in the present case, the learned judge determined that the winding up order under the first petition filed on 24 April 2014 and in respect of which a 'second' winding up order was pronounced on 8 August 2014, must take precedence over the second petition filed on 23 May 2014 and in respect of which a winding up order was made on 31 July 2014. In other words, the learned judge relied on s. 219(2) of the Act to conclude that as there were two petitions for winding up, the one that was earlier in time would prevail over the second petition in a situation where the second petition was heard earlier in time.

[28] The single most important issue that arises for consideration is whether a second winding up order may be granted where a company has been validly wound up on an earlier occasion.

[29] Following from that the learned judge's conclusion that the second winding up order can prevail over the first winding up order by application of s. 219(2) falls for consideration.

The Decision Of The Court Of Appeal

[30] At the hearing of this appeal, having heard learned counsel and considered the chronology of events, we concluded that the second winding up order granted in respect of the first petition be set aside. This is because a company cannot be wound up twice. No order to wind up the company ought to have been pronounced on 8 August 2014. After setting aside the 'second' winding up order, there remained on record only the first order of

31 July 2014 winding up the company. From that date the order of winding up the company took effect, if rendered the second order nugatory and superfluous.

[31] It needs to be stated that the conduct of the solicitor for the company and the second petitioner on 8 August 2014 was misleading when they failed to disclose or draw the court's attention to the existence of the first petition as well as the 'unless order' that had been made under the first petition. The fact that the second petitioner had intervened in the first petition evidences this. Such lack of disclosure amounts to misleading and is an unacceptable conduct on the part of an advocate and solicitor of the High Court of Malaya.

[32] We went on to make a further order at the hearing of the appeal. We ordered that the official receiver be appointed as the provisional liquidator of the company with effect from the date of the winding up order, ie, 31 July 2014, in place of Ler & Lum. This in turn was to counter the effect of the lack of disclosure on the part of the solicitor for the company and the solicitors for the second petitioner, which had resulted in their preferred nominees, namely Ler & Lum being appointed as liquidators, rather than Wong Weng Foo. An application for the appointment of a liquidator in place of the provisional liquidator, the official receiver can then be considered in due course. Each party was ordered to bear its own costs and the deposit be refunded.

Reasons For Our Decision

[33] It is a settled legal principle that there is no prohibition against the filing of more than one winding up petition against a company at any one time. There is no requirement that leave of the court be obtained for the filing of the second or subsequent petition to wind up a company. (see the decision of this court in *Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248. See also *In re European Banking Company ex parte Baylis* (1866) LR 2 Eq 521 and *Ladli Parshad And Anor v. Karnal Distillery Co Ltd* AIR 1954 P H 94, 1954 24 CompCas 77 P H).

[34] However once a winding up order has been pronounced in respect of any one of these petitions, a second winding up order cannot be pronounced. In other words a company that has been wound up, cannot be subsequently wound up again. (see the decision of this court in *Sinarlim Sdn Bhd. v Waja Destinasi (M) Sdn Bhd* [2008] 1 LNS 72).

[35] The learned judge erred in granting the second order of winding up. The proper course to have been adopted would have been an order of dismissal against the petition which was filed earlier in time but heard subsequent to the second petition ie, after a winding up order had been granted in respect of the second petition. (see *In re The Norton Iron Co* (1878) 47 LJ Ch 9 and *In re Building Societies' Trust Ltd* (1890) 44 Ch D 140).

[36] The learned judge, with respect, further erred in the application of s. 219(2) of the Act to the factual matrix of this case. As set out in that section and as explained in *Savant-Asia Sdn Bhd* (above) the section provides that a winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up.

[37] The use of the word 'the' preceding 'winding up' in the last segment of the section, clearly envisages that the date of commencement of a winding up and its consequences, come into play as of the date of the filing of that particular winding up petition.

[38] Section 219(2) does not provide that when there is more than one petition, that one which is earliest in time prevails. Nor does it provide that the date of commencement of winding up in a situation where there are two petitions is ascertained from the earlier dates of filing of the two petitions. Neither does the section sanction the pronouncement of two orders of winding up successively, followed by a calculation or ascertainment of the date of commencement as dating back to the filing of the first petition, notwithstanding that the first order of winding up was pronounced in respect of the petition filed second in time. The correct date for commencement would necessarily date back only to the date of presentation or filing of the second petition.

[39] In other words the petition that was heard first in time and resulted in the grant of an order of winding up is the correct date to ascertain the commencement of winding up as stipulated under s. 219(2).

[40] The learned judge therefore erred in granting two orders of winding up the same company twice, and then ascertaining the date of commencement of winding up under s. 219(2) as relating back to the date of filing of the earlier of the two petitions.

[41] For these reasons we reversed the decision of the learned judge and allowed the appeal, setting aside the second order seeking to wind up the company twice. As stated above we further substituted the liquidators appointed under the first order for winding up with the official receiver. This allowed the parties to apply for the liquidators of their choice by way of further application to the winding up court where they could both be heard, and a fully considered decision be made by the court with the benefit of disclosure of all the salient facts.